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PATENT  
022024.000200US

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

On 7/9/04

TOWNSEND and TOWNSEND and CREW LLP

By: *Camela Skelton*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Kang P. Lee, et al.

Application No.: 10/034,444

Filed: December 21, 2001

For: Aerogel Powder Therapeutic Agents

Examiner: M. Haghighatian

Art Unit: 1616

STATEMENT IN SUPPORT OF  
PETITION FOR REVIVAL OF AN  
APPLICATION ABANDONED  
UNINTENTIONALLY UNDER 37 CFR  
1.137(b)

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

For the reasons presented below and in the attached Declarations by Dr. Kang Lee, Dr. George Gould, and Dr. Poongunran Muthukumaran, the entire delay in filing the required reply to the Office Action mailed June 30, 2003 in the instant application until the filing date of the accompanying Petition pursuant to 37 CFR 1.137(b) was unintentional.

As set forth in the Declarations by Dr. Kang Lee and Dr. George Gould, who are the co-inventors of the instant application, they intended that a response to the Office Action mailed June 30, 2003 be responded to. They were both unaware of the

need to respond by December 30, 2003 to avoid abandonment of the instant application. They were both also unaware that the application was abandoned until May 19, 2004.


As set forth in the Declaration by Dr. Poongunran Muthukumaran, he was the first to recognize, on May 19, 2004, that the instant application had been abandoned. After that date, he began an investigation into the circumstances of the abandonment and contacted the undersigned on or about June 10, 2004 for assistance with the possibility of reviving the application.

The undersigned began to assist Dr. Poongunran Muthukumaran with the investigation as well as the preparation of the necessary reply and documentation after a review of the Office Action.

Thus, the entire delay in filing the required reply to the Office Action mailed June 30, 2003 in the instant application until the filing date of the accompanying Petition and reply to the Action, including a Request for Continued Examination, was unintentional.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858-350-6151 .

Respectfully submitted,

  
Kawai Lau, Ph.D.  
Reg. No. 44,461

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 858-350-6100  
Fax: 415-576-0300  
Attachments  
60257210 v1

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)  
022024.000200US

First named inventor: Lee, Kang P.

Application No.: 10/034,444

Art Unit: 1616

Filed: December 21, 2001

Examiner: M. Haghighatian

Title: Aerogel Powder Therapeutic Agents

Attention: Office of Petitions  
**Mail Stop Petition**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
FAX: (703) 872-9306

**RECEIVED**  
JUL 15 2004  
**OFFICE OF PETITIONS**

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee -- required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity - fee \$665 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$\_\_\_\_\_ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of \_\_\_\_\_ (identify type of reply):

- ☐ has been filed previously on \_\_\_\_\_.
- ☒ is enclosed herewith.

B. The issue fee of \$ \_\_\_\_\_

- ☐ has been paid previously on \_\_\_\_\_.
- ☐ is enclosed herewith.

[Page 1 of 2]

07/14/2004 AWONDAF1 00000111 201430 10034444

04 FC:2453 665.00 DA

## 3. Terminal disclaimer with disclaimer fee

- ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$\_\_\_\_\_ for a small entity or \$\_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

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July 9, 2004

Date



Signature

Telephone

Number: (858) 350-6100

Kawai Lau

Typed or printed name

Two Embarcadero Center, Eighth Floor

San Francisco, CA 94111-3834

Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☒ Other Revocation of Power of Attorney With New Poer of Attorney and Change of Correspondence, Statement Under 37 CFR 3.73(b)

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

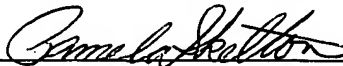
I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

July 9, 2004

Date



Signature

Pamela Skelton

Typed or printed name of person signing certificate



# FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 2,262

## Complete if Known

Application Number	10/034,444
Filing Date	December 21, 2001
First Named Inventor	Lee, Kang P.
Examiner Name	M. Haghighatian
Art Unit	1616
Attorney Docket No.	022024-000200US

RECEIVED

JUL 15 2004

OFFICE OF PETITIONS

## METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit  
Account  
Number

20-1430

Deposit  
Account  
Name

Townsend and Townsend and Crew LLP

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

## 1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1)

(\$)

## 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

		Extra Claims		Fee from below		Fee Paid
Total Claims						
29	**	=	20	X9	=	180
Independent Claims						
27	**	=	3	X43	=	1,032
Multiple Dependent						
				X	=	

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2)

(\$1,212

\*\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

## 3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	665
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Petitions related to provisional applications	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	385
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) \_\_\_\_\_

\*Reduced by Basic Filing Fee Paid SUBTOTAL (3)

(\$1,050

## SUBMITTED BY

Complete (if applicable)

Name (Print/Type)	Kawai Lau	Registration No. (Attorney/Agent)	44461	Telephone	858-350-6100
Signature		Date	July 9, 2004		

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